

purchased, used, or sold by a provider of Internet access to provide Internet access.”.

(2) **INTERNET ACCESS.**—Section 1104(5) of that Act is amended by striking the second sentence and inserting “The term ‘Internet access’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

“SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

“(a) **PRE-OCTOBER 1998 TAXES.**—

“(1) **IN GENERAL.**—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

“(A) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) **TERMINATION.**—This subsection shall not apply after November 1, 2007.

“(b) **PRE-NOVEMBER 2003 TAXES.**—

“(1) **IN GENERAL.**—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

“(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) **TERMINATION.**—This subsection shall not apply after November 1, 2005.”.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

“SEC. 1106. ACCOUNTING RULE.

“(a) **IN GENERAL.**—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

“(b) **DEFINITIONS.**—In this section:

“(1) **CHARGES FOR INTERNET ACCESS.**—The term ‘charges for Internet access’ means all charges for Internet access as defined in section 1105(5).

“(2) **CHARGES FOR TELECOMMUNICATIONS SERVICES.**—The term ‘charges for telecommunications services’ means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

“SEC. 1107. EFFECT ON OTHER LAWS.

“(a) **UNIVERSAL SERVICE.**—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

“(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

“(2) in effect on February 8, 1996.

“(b) **911 AND E-911 SERVICES.**—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E-911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E-911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E-911 services.

“(c) **NON-TAX REGULATORY PROCEEDINGS.**—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.”.

SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 5, is amended by adding at the end the following:

“SEC. 1108. EXCEPTION FOR VOICE SERVICES OVER THE INTERNET.

“Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.”.

SEC. 7. GAO STUDY OF EFFECTS OF INTERNET TAX MORATORIUM ON STATE AND LOCAL GOVERNMENTS AND ON BROADBAND DEPLOYMENT.

The Comptroller General shall conduct a study of the impact of the Internet tax moratorium, including its effects on the revenues of State and local governments and on the deployment and adoption of broadband technologies for Internet access throughout the United States, including the impact of the Internet Tax Freedom Act (47 U.S.C. 151 note) on build-out of broadband technology resources in rural underserved areas of the country. The study shall compare deployment and adoption rates in States that tax broadband Internet access service with States that do not tax such service, and take into account other factors to determine whether the Internet Tax Freedom Act has had an impact on the deployment or adoption of broadband Internet access services. The Comptroller General shall report the findings, conclusions, and any recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce no later than November 1, 2005.

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act take effect on November 1, 2003.

Mr. ALLEN. Mr. President, I move to reconsider the vote.

Mr. WYDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FRIST. Mr. President, I congratulate the two managers and all the many Senators on both sides of the aisle who helped bring this bill to conclusion. It has been a tough road, a difficult road. There has been tremendous

debate. It wasn't both sides of the aisle but in the Chamber itself.

There are going to be no further votes this evening. The Senate will reconvene on Monday. At that time we will resume consideration of the JOBS bill, the FSC/ETI bill. The chairman and ranking member of the Finance Committee have lined up Senators to offer amendments on Monday and therefore we will make progress on the bill on Monday. Any votes ordered on amendments during Monday's session will be delayed until Tuesday.

MORNING BUSINESS

Mr. FRIST. I now ask unanimous consent there be a period for morning business with Senators to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask the distinguished Senator from Alaska if I could do a colloquy, without delaying him?

Mr. STEVENS. Fine.

INTERNET TAX NONDISCRIMINATION ACT

Mrs. HUTCHISON. Mr. President, I voted for the bill that has just passed because I have said all along I am against taxing Internet access. I think it is a disruption of interstate commerce. I have said that all along.

The reason I have been concerned about this bill is I have been very afraid that the city franchise taxes that are collected in my State of Texas were somehow going to be brought into the bill. I have now been working with the Senate leaders, the managers of the bill, Senators MCCAIN, ALLEN, WYDEN, and Senator DORGAN, to assure that it was not the intent to take the Texas franchise fee, which is called an access line fee in Texas, to be included in the ban on Internet access. It is not Internet access; it is a franchise fee.

I very much hope we can clarify the record on this point and assure that in conference the definition will be clear so it will be recognized under Federal law 47 U.S.C., section 1104(8)(B), that the Texas access line fee is included as a franchise fee or similar fee, and included in the exceptions from the definition of tax.

I hope we have an assurance from the managers of the bill that this Texas access line fee, which is a franchise fee, would not be included within the definition of Internet access tax.

Mr. WYDEN. Will the Senator yield?

Mrs. HUTCHISON. I am happy to yield.

Mr. WYDEN. I am glad to work with the Senator. I wish to consult with the chairman and also Senator ALLEN, but it has always been our intent—and as the prime Senate sponsor of the law back in 1998 it was always my intent—that franchise fees not be affected by the Internet tax moratorium.